



January 28, 1999

HOUSE BILL No. 1127

DIGEST OF HB1127 (Updated January 26, 1999 12:46 pm - DI 96)

Citations Affected: IC 22-2; noncode.

Synopsis: Indiana Family Leave Act. Allows a person who works for an employer that employs at least 20 employees but not more than 49 employees to take family leave to be with the person's family for the birth, adoption, or serious illness or injury of the person's child or the serious illness or injury of the person's parent or spouse. Protects the employee's employment and benefit rights.

Effective: July 1, 1999.

Day

January 6, 1999, read first time and referred to Committee on Labor and Employment.
January 27, 1999, reported — Do Pass.

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January 28, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1127

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-2-13 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1999]:

4 **Chapter 13. Family Leave From Certain Small Employers**

5 **Sec. 1. As used in this chapter, "child" means an individual who**
6 **is:**

7 (1) the biological, adopted, or foster child of an employee, the
8 stepchild of an employee, the ward of an employee, or a child
9 placed in the proposed adoptive home of an employee under
10 IC 31-19; and

11 (2) either:

12 (A) less than eighteen (18) years of age; or

13 (B) unable to be self-sufficient because of a serious health
14 condition.

15 **Sec. 2. As used in this chapter, "Christian Science practitioner"**
16 **means a Christian Science practitioner who:**

17 (1) resides in Indiana; and

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(2) is listed in The Christian Science Journal.

Sec. 3. As used in this chapter, "commissioner" refers to the commissioner of labor.

Sec. 4. As used in this chapter, "employee" means an individual who:

(1) has been employed for at least twelve (12) months by the employer with respect to whom leave is requested under this chapter; and

(2) worked for the employer for at least one thousand (1,000) hours in the fifty-two (52) weeks immediately preceding the week that the individual begins a period of leave under this chapter.

Sec. 5. As used in this chapter, "employer" means an individual or other person who employs at least twenty (20) employees, but not more than forty-nine (49) employees.

Sec. 6. As used in this chapter, "family leave" means an unpaid absence from an employee's employment that is taken to carry out a family responsibility described in section 11 of this chapter.

Sec. 7. As used in this chapter, "health care provider" means the following:

(1) A physician licensed under IC 25-22.5 or the laws of another state.

(2) A psychologist licensed under IC 25-33 or the laws of another state.

(3) A mental health professional.

(4) A Christian Science practitioner.

Sec. 8. As used in this chapter, "parent" refers to a biological, a foster, or an adoptive parent, a mother-in-law, a father-in-law, a stepparent, or a legal guardian.

Sec. 9. As used in this chapter, "spouse" means the individual to whom an employee is legally married.

Sec. 10. This chapter does not grant a right of family leave to an employee who is employed by the employee's parent, spouse, or child.

Sec. 11. Subject to sections 12 through 17 of this chapter, an employee may take family leave from the employee's employment for any part of a day to do one (1) or more of the following:

(1) Receive prenatal care or counseling related to the birth or care of the employee's child.

(2) Prepare for the birth of the employee's child if the absence occurs within six (6) weeks before the expected birth of the child.



- 1 (3) Give birth to or attend the birth of the employee's child.
 2 (4) Care for or visit with the employee's child or the biological
 3 mother of the employee's child if the absence occurs within six
 4 (6) weeks after:
 5 (A) the birth of the child; or
 6 (B) the placement of the child in the employee's home by a
 7 court, child placing agency, or county department of
 8 family and children.
 9 (5) Attend:
 10 (A) legal proceedings;
 11 (B) interviews; or
 12 (C) counseling sessions;
 13 that are related to the placement of a child in the home of the
 14 employee by a court, child placing agency, or county
 15 department of family and children.
 16 (6) Visit or provide care and supervision for a child, parent,
 17 or spouse of the employee who is subject to an illness, injury,
 18 or other disabling health or mental health condition.
 19 (7) Take the employee's child, parent, or spouse for a
 20 professional visit with a health care provider.

21 Sec. 12. An employee may not take more than eight (8) weeks of
 22 family leave in a twelve (12) month period. However, this section
 23 does not prohibit the employee from taking leave granted under
 24 any of the following:

- 25 (1) Another law.
 26 (2) An agreement.
 27 (3) An employer's policy.

28 Sec. 13. For the purposes of calculating family leave taken by an
 29 employee under section 12 of this chapter, an employee shall be
 30 treated as taking leave as follows:

- 31 (1) One-half (1/2) day of leave if during a day an employee
 32 takes not more than three and three-fourths (3 3/4) hours of
 33 leave from work that the employer otherwise would have
 34 scheduled for the employee, excluding any period routinely
 35 authorized by the employer for meals or rest.
 36 (2) One (1) day of leave if during a day an employee takes
 37 more than three and three-fourths (3 3/4) hours of leave from
 38 work that the employer otherwise would have scheduled for
 39 the employee, excluding any period routinely authorized by
 40 the employer for meals or rest.

41 Sec. 14. If an employee intends to take family leave that consists
 42 of an absence from work:



1 (1) for less than an entire workday; or
 2 (2) to attend a scheduled appointment with a health care
 3 provider;
 4 the employee must make a reasonable effort to schedule the family
 5 leave so that the leave does not unduly disrupt the employer's
 6 operations.

7 Sec. 15. (a) An employee must give reasonable advance notice to
8 an employer of the following:

- 9 (1) The employee's intent to take family leave.
 10 (2) The expected duration of the leave.
 11 (3) The purpose for which the employee intends to use the
 12 family leave.

13 (b) If the employee intends to extend a family leave beyond the
 14 time specified in the employee's initial notice, the employee shall
 15 notify the employer of the expected duration of the extended leave
 16 within a reasonable time after the employee discovers the need for
 17 the extended leave.

18 (c) If an emergency occurs that cannot be reasonably
 19 anticipated, an employee may comply with subsection (a) by giving
 20 an oral notice to the employee's employer within a reasonable time
 21 before or after the employee begins the family leave.

22 Sec. 16. (a) If an employee takes family leave under section 11
 23 of this chapter for more than three (3) days, the employer may
 24 require the employee to provide certification by:

- 25 (1) the health care provider; or
 26 (2) a person involved in an activity described in section 11(5)
 27 of this chapter;

28 that is sufficient under subsection (b) or (c). The employee shall
 29 provide the employer with the certification not later than ten (10)
 30 days after the employee returns to work.

31 (b) This subsection does not apply if an employee takes family
 32 leave for a reason described in section 11(5) of this chapter. The
 33 certification under subsection (a) is sufficient if the certification
 34 states the following:

- 35 (1) The name of the person who needs the employee's care and
 36 the relationship of that person to the employee.
 37 (2) The reason for the family leave.
 38 (3) The date the condition began that required the employee
 39 to take family leave.
 40 (4) The probable duration of the condition.
 41 (5) An estimate of the amount of time that the employee needs
 42 to care for the child, spouse, or parent.



(c) This subsection applies if an employee takes family leave for a reason described in section 11(5) of this chapter. The certification under subsection (a) is sufficient if the certification states the following:

- (1) The reason for the family leave.
- (2) The location where the employee will attend the activity that is the reason for the family leave.
- (3) An estimate of the amount of time that is required for the employee to attend the activity that is the reason for the family leave.

Sec. 17. (a) An employee must take family leave in compliance with the policy adopted by an employer under this section.

(b) An employer may adopt a written policy to govern the following:

- (1) The scheduling of leave for part of a workday under section 14 of this chapter.
- (2) Notices under section 15 of this chapter.

(c) A written policy adopted under this section must uniformly apply to all of the employer's employees. The policy may not unreasonably interfere with the exercise of the family responsibilities described in section 11 of this chapter.

(d) To be applicable to an employee, a written policy issued under subsection (b) must be conspicuously and continuously posted in the area in which the employee is routinely employed for at least thirty (30) working days before the employee takes family leave to which the policy applies.

Sec. 18. (a) Except as provided in subsection (b), if an employee takes family leave in compliance with sections 11 through 17 of this chapter and returns to work, the employee's employer shall immediately do one (1) of the following:

- (1) Return the employee to the position of employment that the employee had before the employee took the family leave if the employer has not filled the employee's previous position.
- (2) Place the employee in another position of employment that provides compensation, benefits, working hours, working shifts, and other terms and conditions equivalent to the position of employment that the employee had before the employee took the family leave if the employer has filled the employee's previous position.

(b) If an employee returns to work before the end of the leave that the employee specified in the employee's notice to the employer under section 15 of this chapter, the employer shall



1 comply with subsection (a) within a reasonable time after the
 2 employee returns to work. A delay in compliance may not extend
 3 beyond the end of the leave specified in the employee's notice.

4 **Sec. 19. Except as provided in:**

- 5 (1) section 20 of this chapter;
- 6 (2) an agreement; or
- 7 (3) an employer's policy;

8 an employee who is on family leave is not entitled to compensation,
 9 additional seniority, or any other benefit that the employee would
 10 be entitled to receive if the employee were available for work.

11 **Sec. 20. During the time an employee is on family leave, the**
 12 **employer shall continue to provide group health insurance**
 13 **coverage on the same terms and conditions in effect at the time the**
 14 **leave began. For an employee who is required to make a**
 15 **contribution for participation in the group health insurance plan**
 16 **while the employee is not on leave, the employer shall make group**
 17 **health insurance premium contributions during the time the**
 18 **employee is on family leave only if the employee continues to make**
 19 **the required contributions while on leave.**

20 **Sec. 21. An employer and employee may agree to alternative**
 21 **employment conditions or terms during the time the employee is on**
 22 **family leave. An agreement under this section does not limit an**
 23 **employee's right to family leave.**

24 **Sec. 22. A notice in a form approved by the commissioner**
 25 **setting forth the rights of employees under this chapter must be**
 26 **conspicuously and continuously posted by the employer in the area**
 27 **in which the employee is routinely employed.**

28 **Sec. 23. A person may not discharge or otherwise discriminate**
 29 **against a person who does any of the following:**

- 30 (1) Opposes a practice prohibited under this chapter.
- 31 (2) Files a charge, institutes a proceeding, or causes another
- 32 to file a charge or institute a proceeding concerning the rights
- 33 and duties under this chapter.
- 34 (3) Assists or intends to assist in an investigation or a
- 35 proceeding concerning the rights and duties under this
- 36 chapter.
- 37 (4) Testifies or intends to testify in an investigation or a
- 38 proceeding concerning the rights and duties under this
- 39 chapter.

40 **Sec. 24. The commissioner may adopt rules under IC 4-22-2 to**
 41 **establish uniform standards to implement this chapter.**

42 **Sec. 25. The commissioner shall enforce this chapter.**



1 **Sec. 26. (a)** A person who is aggrieved by an alleged violation of
 2 this chapter may file a written complaint with the commissioner
 3 not later than thirty (30) days after the earlier of the date that the
 4 person discovers or should have discovered the violation.

5 **(b)** If a complaint is filed with the commissioner under
 6 subsection (a), the commissioner shall investigate the complaint
 7 and attempt to informally resolve the complaint.

8 **(c)** If a dispute is not informally resolved within fourteen (14)
 9 days after the commissioner receives the complaint, the
 10 commissioner shall initiate a proceeding under IC 4-21.5-3-6 and
 11 adjudicate the complaint under IC 4-21.5-3. The commissioner
 12 shall join the complainant and each person who is alleged to have
 13 committed a violation under this chapter as parties to the
 14 proceeding. Unless the parties to the proceeding agree to a later
 15 date or the interests of justice require, the presiding officer in the
 16 proceeding shall schedule a hearing on the complaint to be held not
 17 later than sixty (60) days after the commissioner receives the
 18 complaint.

19 **Sec. 27.** The commissioner may issue any reasonable order to
 20 remedy a violation under this chapter. The order may include the
 21 following:

22 **(1)** An order that the affected person be reinstated as
 23 described in section 18 of this chapter.

24 **(2)** A requirement that the violator reimburse the
 25 complainant for compensation and benefits lost as a result of
 26 the violation.

27 **(3)** A requirement that the violator pay the complainant for
 28 the reasonable attorney's fees incurred to bring the person's
 29 complaint and participate as a party in the informal and
 30 formal proceedings under this chapter.

31 **(4)** A requirement that the violator pay a civil penalty to the
 32 complainant in an amount not to exceed one thousand dollars
 33 (\$1,000).

34 **SECTION 2.** [EFFECTIVE JULY 1, 1999] **(a)** IC 22-2-13, as
 35 added by this act, does not excuse noncompliance with a provision
 36 of a collective bargaining agreement or other employment benefit
 37 program or plan in effect on July 1, 1999, that is not in substantial
 38 conflict with IC 22-2-13, as added by this act. IC 22-2-13, as added
 39 by this act, does not justify an employer in reducing employment
 40 benefits provided by the employer that exceed the benefits required
 41 by IC 22-2-13, as added by this act.

42 **(b)** This SECTION expires July 1, 2002.



1 SECTION 3. [EFFECTIVE JULY 1, 1999] (a) Notwithstanding
2 IC 22-2-13, as added by this act, the commissioner of labor shall
3 carry out the duties imposed upon the commissioner under
4 IC 22-2-13, as added by this act, under interim written guidelines
5 approved by the commissioner of labor.

6 (b) This SECTION expires on the earlier of the following:

7 (1) The date rules are adopted under IC 22-2-13, as added by
8 this act.

9 (2) June 30, 2001.

10 SECTION 4. [EFFECTIVE JULY 1, 1999] (a) The commissioner
11 of labor shall educate employers and employees, in a manner the
12 commissioner determines to be appropriate, regarding the rights
13 and responsibilities of employers and employees under IC 22-2-13,
14 as added by this act, before January 1, 2000.

15 (b) This SECTION expires January 1, 2000.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1127, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

LIGGETT, Chair

Committee Vote: yeas 8, nays 4.

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